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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8543 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AUTO SERVICES

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/2000

ORAL JUDGEMENT

#. Challenge has been made by petitioner, a partnership firm and retail dealer for sale of petrol products to the orders dated 21/10/95 annexure-H and annexure-I dated 15/12/97, passed by respondents No.2 and 1 respectively.

#. Under the first order, the respondent No.2 ordered for confiscation of petroleum products of the value of Rs.12,000/= out of the seizure made during the course of inspection of 3000 liters quantity of petrol worth Rs.59,250/=.

#. The appeal preferred against this order by the petitioner came to be rejected by respondent No.1 under its order dated 29.11.96. The petitioner challenged that order in this court by filing special civil application No.93 of 1997 which came to be decided on 4.8.97 and the special civil application was not pressed by petitioner as it has given permission to file review application before the appellate authority. The review application filed by petitioner came to be rejected under the order dated 15.12.97. Hence this special civil application.

#. On the inspection of petrol pump of the petitioner by supplies inspector on 18.6.94, the following irregularities were noticed:

1. On the notice board of the petrol pump, working hours have not been displayed.

2. In the memo of bill, name, address of the customer and number of vehicle are not being written.

3. In the sale bill book, office copy is not printed like original nor the name, address, licence number etc. of the firm are being given by rubber stamp in the office copy.

4. In the stock statement, such accounts are not being written. Petrol stock statement and the periodical monthly statements have been inspected upto 18.6.94, date of inspection. Particulars of sale and stock variation have been found as under:

Month	Sale of	In liter	Variation shown
Jan.94	143211	Liter	1427 0.99 %age
Feb.94	130508	""	1297 0.99
Mar.94	142788	""	1434 1.00
Apr.94	139098	""	1395 1.00
May.94	152255	""	1517 0.99
Jun.94	87374	""	826 0.94
Upto period	795235		7896

#. The petitioner filed reply to the notice and explained each and every irregularity. However, as stated earlier, the original authority has not accepted this reply and ordered for deposit of part of the cost of confiscated petrol which order was confirmed in appeal and review. The learned counsel for the petitioner contended that these irregularities which are pointed out are of very minor and technical nature and this order made for confiscation of the quantity of petrol cost of Rs.12,000= is wholly arbitrary and unjustified. It has next been contended that in the review matter was not considered by the respondent No.2 in its correct perspective. The petitioner made a grievance in the earlier petition before the court that while passing the order, the appellate authority has not considered relevant Government Circulars. Copies of those circulars have been produced on record of this special civil application as annexures-B, C and D. Lastly, it is contended that otherwise also, even if it is taken that the last irregularity pointed out has not been properly explained as the first three irregularities are wholly technical and minor in nature, the matter needs to be reconsidered, re.: the confiscation of the cost of the part of seized petrol.

#. The learned counsel for the respondent has supported the orders passed by the authority.

#. I am in agreement with the contention of learned counsel for the petitioner that the first, irregularity pointed out is of minor and technical nature and on proof of the same, this order of confiscation of the cost of part of petrol is not justified. It is true that on the day of inspection, the notice board at the petrol pump, re.: working hours, was not displayed, but it is not the case that it is not displayed by petitioner everyday. The explanation furnished by petitioner for this irregularity seems to be plausible and reasonable. It is not in dispute that the petitioner's petrol pump works right from 7:00 a.m. to 11:00 p.m. daily. There is no recess and looking to the working hours, even if it is not displayed on the notice board, how far it can be said to be against public interest. It is true that the working hours are to be displayed but when for this continuous period the petrol pump of the petitioner functions and petrol and other petroleum products are being made available to the consumers, this irregularity is not that serious which justifies confiscation of part of seized petrol. The learned counsel for the respondent has failed to show any malafide intention of the

petitioner for this non displaying of working hours or any inconvenience or difficulty is being caused or suffered by any consumer. In the explanation furnished it has been mentioned by petitioner that the Board has now been put on the site. When on detection of this irregularity, it has been cured by petitioner as it is not disputed by learned counsel for the respondent, how far for this irregularity, it is justified to penalize the petitioner. The Act is meant for protection of interest of consumers and if for an irregularity committed which is of minor and technical nature, no inconvenience or difficulty is caused to the consumers for whose benefits the enactment has been made, it should have been taken lightly and not so serious as what it has been done in the present case.

#. Second irregularity pointed out that on the memo of bill, name, address of the customer and number of vehicle are not being written, though technically may be correct, but if we go by practical aspect of the matter, it may be very very difficult for the licensee of the dealership of the petroleum product to strictly comply with this requirement. Not only this, it will cause or in fact may result in causing inconvenience and difficulty to the consumers. Looking to the number of consumers and the time consumed for filling petrol in vehicles and more so in peak hours in big city like Ahmedabad, if this requirement is to be scrupulously and strictly adhered to then there will be long queue of the consumers and it will take more than what it is necessary their time to take petrol and other product. Long queues, if are there on the petrol pumps are likely to cause traffic hazards and other traffic problems as almost all the petrol pumps are abutting to the city roads or highways. The salesman has to take name of consumer, then his address and certainly the time will be consumed both ways, namely, time to be consumed for taking these details and then to write the same on the cash memo. In most of the cash memos, the learned counsel for the petitioner correctly contends, that vehicle numbers are being written and that does not take much time of the salesmen of the petrol pumps and it is substantial compliance of the requirement of the order etc. By this, what the learned counsel for the petitioner contends that if it is necessary, full details of the persons who purchased the petrol can be taken out from the R.T.O. office. I find sufficient merits in this contention of the learned counsel for the petitioner and if the numbers of the vehicles are mentioned on the cash memo, it is substantial compliance of the requirement of the orders or Circulars of the Government. Next irregularity is that in the duplicate

of cash memo, these details are not mentioned. Naturally, when on the cash memo these details are not mentioned, how far it is expected to be there on the carbon copy.

#. The third irregularity pointed out in fact, is closely related to the second irregularity. When the copy of the memo of bill is not printed one, naturally, whatever the entries made in the memo of bill will not come on the carbon copy. In this case, it is found that the office copy of the bill book is not printed like original and the name, address of the licensee and licence number etc. are not given even by the rubber stamp on the office copy. It is a technical irregularity. I fail to see any justification in the requirement that the petitioner to have identical copy of the cash memo. The petitioner has made reference to the Circular of the Government dated 1.1.88 and particularly clause-IV thereof under which it is provided that there should not be insistence about memo of bills for sale of petrol or diesel. Such things are not to be taken to be as irregularity. I do not find from the order of the authority below that this Circular has been referred, what to say to consider the same. The explanation has been furnished by petitioner, re.: third irregularity that it is using the memo of bill in the proforma which has been produced during the inspection. It is the case of petitioner that it was not instructed that the office copy of the memo of bill should be like original. The learned counsel for the respondent is not disputing the fact that the Department has ever instructed in writing to the dealers of having a carbon copy exactly of the original cash memo. I find substance in the contention of the learned counsel for the petitioner that when the irregularity No.2 itself is not taken to be an irregularity in the Circulars, then the third irregularity also cannot be taken to be an "irregularity". Taking into consideration all these aspects when the irregularities No.1,2 and 3 cannot be taken to be irregularities which justify any adverse order of confiscation of part of the cost of petrol seized, even if the last irregularity is established, the matter needs to be considered on the question of the quantum of cost of petrol to be confiscated.

##. So far as irregularity No.4 is concerned, it is suffice to say that in review petition of the earlier order by respondent No.1, it has to consider the Circulars of the Government. The Circulars are there. It is not the case of respondents that the Circulars are not there. These Circulars are to be considered by the

respondent-reviewing authority. However, the petitioner is also to certain extent responsible as I do not find any reference of these Circulars made by the counsel appearing for the petitioner in review application. Whatever contention raised those have been reproduced in the order and therefrom I find that these Circulars were not referred. However, when it is not disputed that there are certain circulars relating to the matter in issue those are to be considered. In view of the aforesaid discussion, this petition succeeds and the same is allowed and the order of respondent No.1 dated 15.12.97 is quashed and set side and the matter is remanded back to the authority to reconsider it in the light of the order made by this court, i.e. that three irregularities pointed out cannot be taken to be irregularities which justify confiscation of the cost of part of the seized petrol as well as re.: fourth irregularity, to consider the Circulars and then to pass appropriate orders. It is made clear that in case ultimately after considering the Circulars the reviewing authority is satisfied that irregularity No.4 is established and which justifies confiscation of the cost of part of petrol seized, then while passing the order of confiscation it has to consider that for four irregularities, the order has been passed for confiscation of the cost of the part of seized petrol and for one what amount has to be ordered to be confiscated. Rule is made absolute accordingly with no order as to costs.

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(sunil)